

108TH CONGRESS
1ST SESSION

S. 1688

To amend the Internal Revenue Code of 1986 to repeal the exclusion for extraterritorial income and provide for a deduction relating to income attributable to United States production activities, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 30 (legislative day, SEPTEMBER 29), 2003

Mr. ROCKEFELLER introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to repeal the exclusion for extraterritorial income and provide for a deduction relating to income attributable to United States production activities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; AMENDMENT OF 1986 CODE.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Securing American Factory Employment (SAFE) Act”.

6 (b) AMENDMENT OF 1986 CODE.—Except as other-
7 wise expressly provided, whenever in this Act an amend-
8 ment or repeal is expressed in terms of an amendment

1 to, or repeal of, a section or other provision, the reference
 2 shall be considered to be made to a section or other provi-
 3 sion of the Internal Revenue Code of 1986.

4 **TITLE I—PROVISIONS RELATING**
 5 **TO REPEAL OF EXCLUSION**
 6 **FOR EXTRATERRITORIAL IN-**
 7 **COME**

8 **SEC. 101. REPEAL OF EXCLUSION FOR EXTRATERRITORIAL**
 9 **INCOME.**

10 (a) IN GENERAL.—Section 114 is hereby repealed.

11 (b) CONFORMING AMENDMENTS.—

12 (1)(A) Subpart E of part III of subchapter N
 13 of chapter 1 (relating to qualifying foreign trade in-
 14 come) is hereby repealed.

15 (B) The table of subparts for such part III is
 16 amended by striking the item relating to subpart E.

17 (2) The table of sections for part III of sub-
 18 chapter B of chapter 1 is amended by striking the
 19 item relating to section 114.

20 (3) The second sentence of section
 21 56(g)(4)(B)(i) is amended by striking “or under sec-
 22 tion 114”.

23 (4) Section 275(a) is amended—

24 (A) by inserting “or” at the end of para-
 25 graph (4)(A), by striking “or” at the end of

1 paragraph (4)(B) and inserting a period, and
2 by striking subparagraph (C), and

3 (B) by striking the last sentence.

4 (5) Paragraph (3) of section 864(e) is amend-
5 ed—

6 (A) by striking:

7 “(3) TAX-EXEMPT ASSETS NOT TAKEN INTO
8 ACCOUNT.—

9 “(A) IN GENERAL.—For purposes of”; and
10 inserting:

11 “(3) TAX-EXEMPT ASSETS NOT TAKEN INTO
12 ACCOUNT.—For purposes of”, and

13 (B) by striking subparagraph (B).

14 (6) Section 903 is amended by striking “114,
15 164(a),” and inserting “164(a)”.

16 (7) Section 999(c)(1) is amended by striking
17 “941(a)(5),”.

18 (c) EFFECTIVE DATE.—

19 (1) IN GENERAL.—The amendments made by
20 this section shall apply to transactions occurring
21 after the date of the enactment of this Act.

22 (2) BINDING CONTRACTS.—The amendments
23 made by this section shall not apply to any trans-
24 action in the ordinary course of a trade or business
25 which occurs pursuant to a binding contract—

(A) which is between the taxpayer and a person who is not a related person (as defined in section 943(b)(3) of such Code, as in effect on the day before the date of the enactment of this Act), and

(B) which is in effect on September 17, 2003, and at all times thereafter.

(d) REVOCATION OF SECTION 943(e) ELECTIONS.—

(1) IN GENERAL.—In the case of a corporation that elected to be treated as a domestic corporation under section 943(e) of the Internal Revenue Code of 1986 (as in effect on the day before the date of the enactment of this Act)—

(A) the corporation may, during the 1-year period beginning on the date of the enactment of this Act, revoke such election, effective as of such date of enactment, and

(B) if the corporation does revoke such election—

(i) such corporation shall be treated as a domestic corporation transferring (as of such date of enactment) all of its property to a foreign corporation in connection with an exchange described in section 354 of such Code, and

1 (ii) no gain or loss shall be recognized
2 on such transfer.

3 (2) EXCEPTION.—Subparagraph (B)(ii) of
4 paragraph (1) shall not apply to gain on any asset
5 held by the revoking corporation if—

6 (A) the basis of such asset is determined
7 in whole or in part by reference to the basis of
8 such asset in the hands of the person from
9 whom the revoking corporation acquired such
10 asset,

11 (B) the asset was acquired by transfer (not
12 as a result of the election under section 943(e)
13 of such Code) occurring on or after the 1st day
14 on which its election under section 943(e) of
15 such Code was effective, and

16 (C) a principal purpose of the acquisition
17 was the reduction or avoidance of tax (other
18 than a reduction in tax under section 114 of
19 such Code, as in effect on the day before the
20 date of the enactment of this Act).

21 (e) GENERAL TRANSITION.—

22 (1) IN GENERAL.—In the case of a taxable year
23 ending after the date of the enactment of this Act
24 and beginning before January 1, 2007, for purposes
25 of chapter 1 of such Code, a current FSC/ETI bene-

ficiary shall be allowed a deduction equal to the transition amount determined under this subsection with respect to such beneficiary for such year.

(2) CURRENT FSC/ETI BENEFICIARY.—The term “current FSC/ETI beneficiary” means any corporation which entered into one or more transactions during its taxable year beginning in calendar year 2002 with respect to which FSC/ETI benefits were allowable.

(3) TRANSITION AMOUNT.—For purposes of this subsection—

(A) IN GENERAL.—The transition amount applicable to any current FSC/ETI beneficiary for any taxable year is the phaseout percentage of the base period amount.

(B) PHASEOUT PERCENTAGE.—

(i) IN GENERAL.—In the case of a taxpayer using the calendar year as its taxable year, the phaseout percentage shall be determined under the following table:

Years:	The phaseout percentage is:
2004	80
2005	80
2006	60.

(ii) SPECIAL RULE FOR 2003.—The phaseout percentage for 2003 shall be the amount that bears the same ratio to 100

percent as the number of days after the date of the enactment of this Act bears to 365.

(iii) SPECIAL RULE FOR FISCAL YEAR TAXPAYERS.—In the case of a taxpayer not using the calendar year as its taxable year, the phaseout percentage is the weighted average of the phaseout percentages determined under the preceding provisions of this paragraph with respect to calendar years any portion of which is included in the taxpayer’s taxable year. The weighted average shall be determined on the basis of the respective portions of the taxable year in each calendar year.

(4) BASE PERIOD AMOUNT.—For purposes of this subsection, the base period amount is the aggregate FSC/ETI benefits for the taxpayer’s taxable year beginning in calendar year 2002.

(5) FSC/ETI BENEFIT.—For purposes of this subsection, the term “FSC/ETI benefit” means—

(A) amounts excludable from gross income under section 114 of such Code, and

(B) the exempt foreign trade income of related foreign sales corporations from property

1 acquired from the taxpayer (determined without
2 regard to section 923(a)(5) of such Code (relat-
3 ing to special rule for military property), as in
4 effect on the day before the date of the enact-
5 ment of the FSC Repeal and Extraterritorial
6 Income Exclusion Act of 2000).

7 In determining the FSC/ETI benefit there shall be
8 excluded any amount attributable to a transaction
9 with respect to which the taxpayer is the lessor un-
10 less the leased property was manufactured or pro-
11 duced in whole or in part by the taxpayer.

12 (6) SPECIAL RULE FOR FARM COOPERATIVES.—
13 Determinations under this subsection with respect to
14 an organization described in section 943(g)(1) of
15 such Code, as in effect on the day before the date
16 of the enactment of this Act, shall be made at the
17 cooperative level and the purposes of this subsection
18 shall be carried out in a manner similar to section
19 250(h) of such Code, as added by this Act. Such de-
20 terminations shall be in accordance with such re-
21 quirements and procedures as the Secretary may
22 prescribe.

23 (7) CERTAIN RULES TO APPLY.—Rules similar
24 to the rules of section 41(f) of such Code shall apply
25 for purposes of this subsection.

1 (8) COORDINATION WITH BINDING CONTRACT
 2 RULE.—The deduction determined under paragraph
 3 (1) for any taxable year shall be reduced by the
 4 phaseout percentage of any FSC/ETI benefit real-
 5 ized for the taxable year by reason of subsection
 6 (c)(2), except that for purposes of this paragraph
 7 the phaseout percentage for 2003 shall be treated as
 8 being equal to 100 percent.

9 (9) SPECIAL RULE FOR TAXABLE YEAR WHICH
 10 INCLUDES DATE OF ENACTMENT.—In the case of a
 11 taxable year which includes the date of the enact-
 12 ment of this Act, the deduction allowed under this
 13 subsection to any current FSC/ETI beneficiary shall
 14 in no event exceed—

15 (A) 100 percent of such beneficiary's base
 16 period amount for calendar year 2003, reduced
 17 by

18 (B) the aggregate FSC/ETI benefits of
 19 such beneficiary with respect to transactions oc-
 20 curring during the portion of the taxable year
 21 ending on the date of the enactment of this Act.

1 **SEC. 102. DEDUCTION RELATING TO INCOME ATTRIB-**
 2 **UTABLE TO UNITED STATES PRODUCTION**
 3 **ACTIVITIES.**

4 (a) IN GENERAL.—Part VI of subchapter B of chap-
 5 ter 1 (relating to itemized deductions for individuals and
 6 corporations) is amended by adding at the end the fol-
 7 lowing new section:

8 **“SEC. 199. INCOME ATTRIBUTABLE TO DOMESTIC PRODUC-**
 9 **TION ACTIVITIES.**

10 “(a) IN GENERAL.—There shall be allowed as a de-
 11 duction an amount equal to 9 percent of the qualified pro-
 12 duction activities income of the taxpayer for the taxable
 13 year.

14 “(b) PHASEIN.—In the case of taxable years begin-
 15 ning in 2004, 2005, 2006, 2007, or 2008, subsection (a)
 16 shall be applied by substituting for the ‘9 percent’ the
 17 transition percentage determined under the following
 18 table:

“Taxable years beginning in:	The transition percentage is:
2004	1
2005	2
2006	3
2007 or 2008	6.

19 “(c) QUALIFIED PRODUCTION ACTIVITIES IN-
 20 COME.—For purposes of this section, the term ‘qualified
 21 production activities income’ means an amount equal to

1 the portion of the modified taxable income of the taxpayer
 2 which is attributable to domestic production activities.

3 “(d) DETERMINATION OF INCOME ATTRIBUTABLE
 4 TO DOMESTIC PRODUCTION ACTIVITIES.—For purposes
 5 of this section—

6 “(1) IN GENERAL.—The portion of the modified
 7 taxable income which is attributable to domestic pro-
 8 duction activities is so much of the modified taxable
 9 income for the taxable year as does not exceed—

10 “(A) the taxpayer’s domestic production
 11 gross receipts for such taxable year, reduced by

12 “(B) the sum of—

13 “(i) the costs of goods sold that are
 14 allocable to such receipts,

15 “(ii) other deductions, expenses, or
 16 losses directly allocable to such receipts,
 17 and

18 “(iii) a proper share of other deduc-
 19 tions, expenses, and losses that are not di-
 20 rectly allocable to such receipts or another
 21 class of income.

22 “(2) ALLOCATION METHOD.—The Secretary
 23 shall prescribe rules for the proper allocation of
 24 items of income, deduction, expense, and loss for

1 purposes of determining income attributable to do-
2 mestic production activities.

3 “(3) SPECIAL RULES FOR DETERMINING
4 COSTS.—

5 “(A) IN GENERAL.—For purposes of deter-
6 mining costs under clause (i) of paragraph
7 (1)(B), any item or service brought into the
8 United States without a transfer price meeting
9 the requirements of section 482 shall be treated
10 as acquired by purchase, and its cost shall be
11 treated as not less than its value when it en-
12 tered the United States. A similar rule shall
13 apply in determining the adjusted basis of
14 leased or rented property where the lease or
15 rental gives rise to domestic production gross
16 receipts.

17 “(B) EXPORTS FOR FURTHER MANUFAC-
18 TURE.—In the case of any property described
19 in subparagraph (A) that had been exported by
20 the taxpayer for further manufacture, the in-
21 crease in cost or adjusted basis under subpara-
22 graph (A) shall not exceed the difference be-
23 tween the value of the property when exported
24 and the value of the property when brought

1 back into the United States after the further
2 manufacture.

3 “(4) MODIFIED TAXABLE INCOME.—The term
4 ‘modified taxable income’ means taxable income
5 computed without regard to the deduction allowable
6 under this section.

7 “(e) DOMESTIC PRODUCTION GROSS RECEIPTS.—
8 For purposes of this section, the term ‘domestic produc-
9 tion gross receipts’ means the gross receipts of the tax-
10 payer which are derived from—

11 “(1) any sale, exchange, or other disposition of,
12 or

13 “(2) any lease, rental, or license of,
14 qualifying production property which was manufactured,
15 produced, grown, or extracted in whole or in significant
16 part by the taxpayer within the United States.

17 “(f) QUALIFYING PRODUCTION PROPERTY.—For
18 purposes of this section—

19 “(1) IN GENERAL.—Except as otherwise pro-
20 vided in this paragraph, the term ‘qualifying produc-
21 tion property’ means—

22 “(A) any tangible personal property,

23 “(B) any computer software, and

24 “(C) any property described in section
25 168(f) (3) or (4).

1 “(2) EXCLUSIONS FROM QUALIFYING PRODUC-
 2 TION PROPERTY.—The term ‘qualifying production
 3 property’ shall not include—

4 “(A) consumable property that is sold,
 5 leased, or licensed by the taxpayer as an inte-
 6 gral part of the provision of services,

7 “(B) electricity,

8 “(C) water supplied by pipeline to the con-
 9 sumer,

10 “(D) utility services, or

11 “(E) any property (not described in para-
 12 graph (1)(B)) which is a film, tape, recording,
 13 book, magazine, newspaper, or similar property
 14 the market for which is primarily topical or oth-
 15 erwise essentially transitory in nature.

16 “(g) DEFINITIONS AND SPECIAL RULES.—

17 “(1) TREATMENT OF PASS-THRU ENTITIES.—

18 The Secretary shall prescribe rules for the proper
 19 application of this section in the case of pass-thru
 20 entities other than cooperatives to which paragraph
 21 (2) applies and subchapter S corporations.

22 “(2) EXCLUSION FOR PATRONS OF COOPERA-
 23 TIVES.—

1 “(A) IN GENERAL.—If any amount de-
 2 scribed in paragraph (1) or (3) of section 1385
 3 (a)—

4 “(i) is received by a person from an
 5 organization to which part I of subchapter
 6 T applies, and

7 “(ii) is allocable to the portion of the
 8 qualified production activities income of
 9 the organization which is deductible under
 10 subsection (a) and designated as such by
 11 the organization in a written notice mailed
 12 to its patrons during the payment period
 13 described in section 1382(a),

14 then such person shall be allowed an exclusion
 15 from gross income with respect to such amount.
 16 The taxable income of the organization shall
 17 not be reduced under section 1382 by the por-
 18 tion of any such amount with respect to which
 19 an exclusion is allowable to a person by reason
 20 of this paragraph.

21 “(B) SPECIAL RULES.—For purposes of
 22 applying subparagraph (A), in determining the
 23 qualified production activities income of the or-
 24 ganization under this section—

1 “(i) there shall not be taken into ac-
 2 count in computing the organization’s
 3 modified taxable income any deduction al-
 4 lowable under subsection (b) or (c) of sec-
 5 tion 1382 (relating to patronage dividends,
 6 per-unit retain allocations, and nonpatron-
 7 age distributions), and

8 “(ii) the organization shall be treated
 9 as having manufactured, produced, grown,
 10 or extracted in whole or significant part
 11 any qualifying production property mar-
 12 keted by the organization which its patrons
 13 have so manufactured, produced, grown, or
 14 extracted.

15 “(3) COORDINATION WITH MINIMUM TAX.—The
 16 deduction under this section shall be allowed for
 17 purposes of the tax imposed by section 55; except
 18 that for purposes of section 55, alternative minimum
 19 taxable income shall be taken into account in deter-
 20 mining the deduction under this section.

21 “(4) ORDERING RULE.—The amount of any
 22 other deduction allowable under this chapter shall be
 23 determined as if this section had not been enacted.

24 “(5) COORDINATION WITH TRANSITION
 25 RULES.—For purposes of this section—

1 “(A) domestic production gross receipts
 2 shall not include gross receipts from any trans-
 3 action if the binding contract transition relief of
 4 section 101(c)(2) of the Securing American
 5 Factory Employment (SAFE) Act applies to
 6 such transaction, and

7 “(B) any deduction allowed under section
 8 101(e) of such Act shall be disregarded in de-
 9 termining the portion of the taxable income
 10 which is attributable to domestic production
 11 gross receipts.”.

12 (b) DEDUCTION ALLOWED TO SHAREHOLDERS OF S
 13 CORPORATIONS.—

14 (1) IN GENERAL.—Section 1363(b) (relating to
 15 computation of S corporation’s taxable income) is
 16 amended by striking “and” at the end of paragraph
 17 (3), by striking the period at the end of paragraph
 18 (4) and inserting “, and”, and by adding at the end
 19 the following new paragraph:

20 “(5) the deduction under section 199 shall be
 21 allowed to the S corporation.”

22 (2) INCREASE IN BASIS.—Section 1367(a)(1)
 23 (relating to increases in basis) is amended by strik-
 24 ing “and” at the end of subparagraph (B), by strik-
 25 ing the period at the end of subparagraph (C) and

1 inserting “, and”, and by adding at the end the fol-
 2 lowing new subparagraph:

3 “(D) any deduction allowed under section
 4 199.”

5 (c) MINIMUM TAX.—Section 56(g)(4)(C) (relating to
 6 disallowance of items not deductible in computing earnings
 7 and profits) is amended by adding at the end the following
 8 new clause:

9 “(v) DEDUCTION FOR DOMESTIC PRO-
 10 Duction.—Clause (i) shall not apply to
 11 any amount allowable as a deduction under
 12 section 199.”

13 (d) CLERICAL AMENDMENT.—The table of sections
 14 for part VI of subchapter B of chapter 1 is amended by
 15 adding at the end the following new item:

“Sec. 199. Income attributable to domestic production activi-
 ties.”

16 (e) EFFECTIVE DATE.—

17 (1) IN GENERAL.—The amendments made by
 18 this section shall apply to taxable years ending after
 19 the date of the enactment of this Act.

20 (2) APPLICATION OF SECTION 15.—Section 15
 21 of the Internal Revenue Code of 1986 shall apply to
 22 the amendments made by this section as if they were
 23 changes in a rate of tax.

1 **TITLE II—EMPLOYER-PROVIDED**
 2 **RETIRED EMPLOYEE HEALTH**
 3 **CARE TAX CREDIT**

4 **SEC. 201. TAX CREDIT FOR 75 PERCENT OF EMPLOYER-PRO-**
 5 **VIDED RETIRED EMPLOYEE HEALTH PRE-**
 6 **MIUMS.**

7 (a) IN GENERAL.—Subpart D of part IV of sub-
 8 chapter A of chapter 1 (relating to business-related cred-
 9 its) is amended by adding at the end the following:

10 **“SEC. 45G. RETIRED EMPLOYEE HEALTH INSURANCE EX-**
 11 **PENSES.**

12 “(a) GENERAL RULE.—For purposes of section 38,
 13 in the case of a qualified employer, the retired employee
 14 health insurance expenses credit determined under this
 15 section is an amount equal to 75 percent of the amount
 16 paid by the taxpayer during the taxable year for qualified
 17 retired employee health insurance expenses.

18 “(b) DEFINITIONS AND SPECIAL RULES.—For pur-
 19 poses of this section—

20 “(1) QUALIFIED EMPLOYER.—The term ‘quali-
 21 fied employer’ means any employer which is eligible
 22 for the deduction allowable under section 199 for the
 23 taxable year.

24 “(2) QUALIFIED RETIRED EMPLOYEE HEALTH
 25 INSURANCE EXPENSES.—

1 “(A) IN GENERAL.—The term ‘qualified
2 retired employee health insurance expenses’
3 means any amount paid by an employer for
4 health insurance coverage to the extent such
5 amount is attributable to coverage provided to
6 any retired employee and such retired employ-
7 ee’s spouse and dependents.

8 “(B) EXCEPTION FOR AMOUNTS PAID
9 UNDER SALARY REDUCTION ARRANGEMENTS.—
10 No amount paid or incurred for health insur-
11 ance coverage pursuant to a salary reduction
12 arrangement shall be taken into account under
13 subparagraph (A).

14 “(C) HEALTH INSURANCE COVERAGE.—
15 The term ‘health insurance coverage’ has the
16 meaning given such term by paragraph (1) of
17 section 9832(b) (determined by disregarding
18 the last sentence of paragraph (2) of such sec-
19 tion).

20 “(3) RETIRED EMPLOYEE.—The term ‘retired
21 employee’ means an individual who has met any
22 years of service or disability requirements under an
23 employee benefit plan of the employer.

1 “(c) CERTAIN RULES MADE APPLICABLE.—For pur-
 2 poses of this section, rules similar to the rules of section
 3 52 shall apply.

4 “(d) DENIAL OF DOUBLE BENEFIT.—No deduction
 5 or credit under any other provision of this chapter shall
 6 be allowed with respect to qualified retired employee
 7 health insurance expenses taken into account under sub-
 8 section (a).

9 “(e) TERMINATION.—This section shall not apply to
 10 taxable years beginning after December 31, 2003.”.

11 (b) CREDIT TO BE PART OF GENERAL BUSINESS
 12 CREDIT.—Section 38(b) (relating to current year business
 13 credit) is amended by striking “plus” at the end of para-
 14 graph (14), by striking the period at the end of paragraph
 15 (15) and inserting “, plus”, and by adding at the end the
 16 following:

17 “(16) the retired employee health insurance ex-
 18 penses credit determined under section 45G.”.

19 (c) NO CARRYBACKS.—Subsection (d) of section 39
 20 (relating to carryback and carryforward of unused credits)
 21 is amended by adding at the end the following:

22 “(11) NO CARRYBACK OF SECTION 45G CREDIT
 23 BEFORE EFFECTIVE DATE.—No portion of the un-
 24 used business credit for any taxable year which is
 25 attributable to the retired employee health insurance

1 expenses credit determined under section 45G may
 2 be carried back to a taxable year ending before the
 3 date of the enactment of section 45G.”.

4 (d) CLERICAL AMENDMENT.—The table of sections
 5 for subpart D of part IV of subchapter A of chapter 1
 6 is amended by adding at the end the following:

“Sec. 45G. Retired employee health insurance expenses.”.

7 (e) EFFECTIVE DATE.—The amendments made by
 8 this section shall apply to amounts paid or incurred in tax-
 9 able years beginning after December 31, 2003.

10 **TITLE III—AMENDMENTS TO**
 11 **TITLE VII OF THE TARIFF ACT**
 12 **OF 1930**

13 **SEC. 301. CAPTIVE PRODUCTION.**

14 Section 771(7)(C)(iv) of the Tariff Act of 1930 (19
 15 U.S.C. 1677(7)(C)(iv)) is amended to read as follows:

16 “(iv) CAPTIVE PRODUCTION.—If do-
 17 mestic producers transfer internally, in-
 18 cluding to affiliated persons as defined in
 19 paragraph (33), significant production of
 20 the domestic like product for the produc-
 21 tion of a downstream article and sell sig-
 22 nificant production of the domestic like
 23 product in the merchant market, then the
 24 Commission, in determining market share
 25 and the factors affecting financial perform-

1 ance set forth in clause (iii), shall focus
2 primarily on the merchant market for the
3 domestic like product.”.

4 **SEC. 302. PRICE.**

5 Section 771(7)(C)(ii) of the Tariff Act of 1930 (19
6 U.S.C. 1677(7)(C)(ii)) is amended by adding at the end
7 the following flush sentence:

8 “Imports of the subject merchandise may
9 have a significant effect on prices irrespec-
10 tive of whether the magnitude of, or
11 change in the volume of, imports of the
12 subject merchandise is significant.”.

13 **SEC. 303. VULNERABILITY OF INDUSTRY.**

14 Section 771(7)(C)(iii) of the Tariff Act of 1930 (19
15 U.S.C. 1677(7)(C)(iii)) is amended in the last sentence
16 by striking the period at the end and inserting “, including
17 whether the industry is vulnerable to the effects of imports
18 of the subject merchandise.”.

19 **SEC. 304. CAUSAL RELATIONSHIP BETWEEN IMPORTS AND**
20 **INJURY.**

21 Section 771(7)(E)(ii) of the Tariff Act of 1930 (19
22 U.S.C. 1677(7)(E)(ii)) is amended by adding at the end
23 the following: “The Commission need not determine the
24 significance of imports of the subject merchandise relative
25 to other economic factors.”.

1 **SEC. 305. PREVENTION OF CIRCUMVENTION.**

2 Section 781(c) of the Tariff Act of 1930 (19 U.S.C.
3 1677j(c)) is amended by adding at the end the following
4 new paragraph:

5 “(3) SPECIAL RULE.—The administering au-
6 thority shall apply paragraph (1) with respect to al-
7 tered merchandise excluded from, or not specifically
8 included in, the merchandise description used in an
9 outstanding order or finding, if such application is
10 not inconsistent with the affirmative determination
11 of the Commission on which the order or finding is
12 based.”.

13 **SEC. 306. FULL RECOGNITION OF SUBSIDY CONFERRED**
14 **THROUGH PROVISION OF GOODS AND SERV-**
15 **ICES AND PURCHASE OF GOODS.**

16 Section 771(5)(E) of the Tariff Act of 1930 (19
17 U.S.C. 1677(5)(E)) is amended by adding at the end the
18 following: “If transactions in the country which is the sub-
19 ject of the investigation or review do not reflect market
20 conditions due to government action associated with provi-
21 sion of the good or service or purchase of the goods, deter-
22 mination of the adequacy of remuneration shall be through
23 comparison with the most comparable market price else-
24 where in the world.”.

1 **SEC. 307. PROHIBITION ON MASKING REIMBURSEMENT OF**
2 **DUTIES.**

3 Section 772(d) of the Tariff Act of 1930 (19 U.S.C.
4 1677a(d)) is amended—

5 (1) by striking “and” at the end of paragraph
6 (2);

7 (2) by striking the period at the end of para-
8 graph (3) and inserting “; and”; and

9 (3) by adding at the end the following new
10 paragraphs:

11 “(4) if the importer is the producer or exporter,
12 or the importer and the producer or exporter are af-
13 filiated persons, an amount equal to the dumping
14 margin calculated under section 771(35)(A), unless
15 the producer or exporter is able to demonstrate that
16 the importer was in no way reimbursed for any anti-
17 dumping duties paid; and

18 “(5) if the importer is the producer or exporter,
19 or the importer and the producer or exporter are af-
20 filiated persons, an amount equal to the net
21 countervailable subsidy calculated under section
22 771(6), unless the producer or exporter is able to
23 demonstrate that the importer was in no way reim-
24 bursed for any countervailing duties paid.”.

1 **SEC. 308. EXPORT PRICE AND CONSTRUCTED EXPORT**
 2 **PRICE.**

3 Section 772(c)(2)(A) of the Tariff Act of 1930 (19
 4 U.S.C. 1677a(c)(2)(A)) is amended by inserting “(includ-
 5 ing countervailing duties imposed under this title)” after
 6 “duties”.

7 **SEC. 309. APPLICATION TO CANADA AND MEXICO.**

8 Pursuant to article 1902 of the North American Free
 9 Trade Agreement and section 408 of the North American
 10 Free Trade Agreement Implementation Act, the amend-
 11 ments made by this title shall apply with respect to goods
 12 from Canada and Mexico.

13 **SEC. 310. EFFECTIVE DATE.**

14 The amendments made by this title shall apply with
 15 respect to determinations made under title VII of the Tar-
 16 iff Act of 1930 that—

17 (1) are made with respect to investigations ini-
 18 tiated or petitions filed after the date of enactment
 19 of this Act; or

20 (2) have not become final as of such date of en-
 21 actment.

○